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TO AMEMBASSY MEXICO

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SUBJECT: NEW MEXICAN LAW ON INVENTIONS AND TRADEMARKS

REF: (A) MEXICO 8069; (B) STATE 13687

1. SUMMARY: DEPARTMENT AND OTHER INTERESTED AGENCIES HAVE BEEN STUDYING NEW MEXICAN INDUSTRIAL PROPERTY LAW AND ITS OVERALL RAMIFICATIONS FOR U.S. INDUSTRY AND OFFICIAL U.S. POLICY IN THE INDUSTRIAL PROPERTY FIELD. IN VIEW OF EMBASSY RECOMMENDATION CONTAINED REFTEL AND OF INFORMATION OBTAINED AT RECENT FORUM IN NEW YORK ON THIS SUBJECT, DEPARTMENT HAS DECIDED TO MAKE NO FURTHER FORMAL REPRESENTATION TO THE ECHEVERRIA ADMINISTRATION. METHOD OF APPROACHING THE NEW ADMINISTRATION ON THIS ISSUE WILL BE DECIDED IN THE FUTURE. END SUMMARY.

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2. AS REPORTED REFTEL B, THE NEW MEXICAN LAW HAS CAUSED WIDESPREAD CONCERN IN U.S. BUSINESS CIRCLES AND HAS PROMPTED NUMEROUS REQUESTS FOR INTERVENTION BY THE USG. IN RESPONSE TO REFTEL A, HOWEVER, WASHINGTON AGENCIES HAVE UNDERTAKEN FURTHER ASSESSMENT OF MEXICAN LAW AND OF APPROPRIATE USG RESPONSE, INCLUDING ATTENDANCE BY STATE, COMMERCE AND PATENT OFFICE REPRESENTATIVES AT FORUM ON NEW LAW ORGANIZED BY US-MEXICO CHAMBER OF COMMERCE.

FORUM TOOK PLACE IN NEW YORK ON JULY 27 AND WAS ATTENDED BY APPROXIMATELY 160 BUSINESS EXECUTIVES AND PATENT AND TRADEMARK PRACTITIONERS. FORUM PANEL INCLUDED PROMINENT U.S. AND MEXICAN ATTORNEYS, THE MEXICAN COMMERCIAL COUNSELLOR IN NEW YORK AND MOST IMPORTANTLY, LIC. JAIME ALVAREZ SOBERANIS, DIRECTOR OF GOM NATIONAL REGISTRY FOR THE TRANSFER OF TECHNOLOGY, AND LIC. RAFAEL DE PINA VARA, GOM DIRECTOR GENERAL OF INDUSTRIAL PROPERTY.

3. LENGTHY PRESENTATION BY ALVAREZ AND SUBSEQUENT CANDID QUESTION AND ANSWER SESSION RESULTED IN EXPRESSION OF VIEWS USEFUL TO BOTH SIDES. PURPOSE OF LAW WAS EXPLAINED

AND CERTAIN AMBIGUITIES WERE CLARIFIED TO THE SATISFACTION OF MANY BUSINESSMEN. OTHER AMBIGUITIES AND PROBLEM AREAS WERE LEFT UNEXPLAINED AND IT IS EVIDENT THAT GOM OFFICIALS HAD NOT THOROUGHLY CONSIDERED THE FULL RAMIFICATIONS OF SOME OF THE LAW'S PROVISIONS.

4. THE MOST USEFUL INFORMATION DERIVED FROM THE FORUM WAS GOM'S DETERMINATION TO STICK WITH THE LAW AS PRESENTLY WRITTEN. WHEN A PROMINENT U.S. ATTORNEY POINTED OUT THAT THE LAW CLEARLY VIOLATED THE PARIS CONVENTION, ALVAREZ COUNTERED THAT THE GOM DID NOT AGREE WITH THIS INTERPRETATION, BUT THAT IF COURTS FOUND THE LAW TO BE INCONSISTENT WITH THE CONVENTION REQUIREMENTS, THEN QTE THE CONVENTION WOULD HAVE TO CHANGE UNQTE. ALVAREZ ALSO STATED THAT THE GOM WOULD NOT BE PUBLISHING REGULATIONS TO IMPLEMENT THE NEW LAW PRIOR TO THE CHANGE IN ADMINISTRATION; HE SAID, HOWEVER, THAT "ADMINISTRATIVE CRITERIA" WHICH WOULD EXPLAIN AND CLARIFY THE LAW WOULD BE PUBLISHED LIMITED OFFICIAL USE

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IN AUGUST. ALVAREZ DECLINED TO CONSIDER WRITTEN INDUSTRY COMMENTS BUT INSISTED THAT VIEWS SUCH AS THOSE EXPRESSED AT FORUM WOULD BE TAKEN INTO ACCOUNT IN DRAFTING "CRITERIA".

5. IN VIEW OF INFORMATION AND RECOMMENDATION CONTAINED REFTEL A, GOM'S STATED INTENTION TO RETAIN NEW LAW AND ITS APPARENT INDIFFERENCE TO ITS TREATY OBLIGATIONS IN THE

INDUSTRIAL PROPERTY AREA, THE CONCERNED WASHINGTON AGENCIES HAVE AGREED THAT BEST COURSE OF ACTION IS TO MAKE NO FURTHER OFFICIAL REPRESENTATIONS TO PRESENT ADMINISTRATION. WE WOULD HOPE, HOWEVER, TO TAKE UP THIS MATTER WITH THE LOPEZ ADMINISTRATION AT AN EARLY DATE.

6. BALANCED ASSESSMENT OF TRUE IMPACT OF NEW LAW WILL BE DIFFICULT TO UNDERTAKE FOR SEVERAL YEARS. IT IS BELIEVED HOWEVER, THAT, AT A MINIMUM, THERE WILL BE A SIGNIFICANT REDUCTION IN THE TRANSFER OF TECHNOLOGY IN THE CHEMICAL AND PHARMACEUTICAL FIELDS. FOR EXAMPLE, WE UNDERSTAND THAT MANY FOREIGN DRUG COMPANIES HAVE DECIDED NOT TO CONVERT PENDING PATENT APPLICATIONS TO CERTIFICATES OF INVENTION. ACCORDING TO TRANSITORY ARTICLES 9 AND 10, DEADLINE FOR MAKING CONVERSION WAS AUGUST 11, I.E., 6 MONTHS AFTER LAW'S ENTERING FORCE. WITHOUT THE INDUSTRIAL PROPERTY RIGHTS GRANTED BY CERTIFICATES OR PATENTS, FOREIGN FIRMS WOULD NOT BE ABLE TO ENTER INTO LICENSING AGREEMENTS TO TRANSFER THE NEW PRODUCT TECHNOLOGY. FURTHERMORE, UNLESS THE GOM TAKES CONSCIOUS REMEDIAL ACTIONS, THERE WILL BE A MAJOR DOWNTURN IN INVESTMENT BY EITHER FOREIGN OR DOMESTIC FIRMS IN THESE INDUSTRIAL SECTORS. OVER THE LONG TERM, THIS COULD SERVE TO MAKE MEXICO MORE DEPENDENT ON IMPORTED CHEMICALS AND PHARMACEUTICALS, OR, ALTERNATIVELY, GOVERNMENT INVESTMENT IN AND DOMINATION OF THOSE INDUSTRIAL SECTORS.

7. BESIDES THE MINIMUM NEGATIVE EFFECTS FOR THE MEXICAN ECONOMY DESCRIBED ABOVE, THE NEW LAW STILL CONTAINS

AMBIGUITIES AND POSES NUMEROUS PRACTICAL PROBLEMS FOR FOREIGN FIRMS. HOPEFULLY THE "ADMINISTRATIVE CRITERIA" TO BE PUBLISHED SOON WILL SOLVE SOME OF THESE PROBLEMS. LIMITED OFFICIAL USE

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8. ACTION REQUESTED: EMBASSY REQUESTED TO CONTINUE TO FOLLOW THIS NEW LAW AND ITS IMPLEMENTATION CLOSELY AND SHOULD NOT HESITATE TO DISCUSS WITH GOM OFFICIALS ON INFORMAL BASIS OUR CONCERNS. EMBASSY REQUESTED TO ADVISE DEPARTMENT ON EXPECTED PUBLICATION DATE OF "ADMINISTRATIVE CRITERIA" FOR NEW LAW AND TO POUCH COPY TO DEPARTMENT, TOGETHER WITH ENGLISH TRANSLATION, IF POSSIBLE. EMBASSY REQUESTED TO ASCERTAIN IF GOM MAINTAINED AUGUST 11 AS DEADLINE FOR CONVERSION OF PATENT APPLICATIONS TO CERTIFICATES OF INVENTION AND TO REPORT ANY AVAILABLE INFORMATION ON EXTENT OF CONVERSION OF PENDING APPLICATIONS. ATTORNEYS ANTONIO DAVALOS AND JUAN MIJARES OF LAW FIRM BASHAM, RINGE AND CORREA WERE PANELISTS AT RECENT FORUM AND WOULD BE GOOD SOURCE OF INFORMATION ON THIS SUBJECT

AND FOR ENGLISH TRANSLATION OF "CRITERIA". LOCAL OFFICES
OF U.S. PHARMACEUTICAL FIRMS MAY ALSO BE GOOD SOURCES OF
INFORMATION. ROBINSON

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